IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.5340 OF 2004

Union of India & Anr. ..Petitioners

Vs.

N.K.Gupta ..Respondent

Mr.Suresh Kumar Advocate for Petitioners
Mr.G.S.Walia Advocate with Mr. Rahul Walia Advocate for Respondents

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 11TH MARCH, 2005.

P.C.

. The challenge by the Petitioners is to the order of Tribunal which has taken a view that enquiry held was a common enquiry in violation of the rules of holding common enquiry. The rule requires that the sanction of the President of India must be taken before common enquiry is held. This is so provided in Rule 13 of the Railway Servants (Discipline and Appeal) Rules, 1968. Admittedly there has been non-compliance of Rule 13. The learned Tribunal relying on the rule and on the judgment of the Apex Court in **Tripuracharan Chatterji Vs. State of West Bengal and others, 1979 (1) (S.L.R.), 878**, set aside the punishment imposed on the delinquent employee with directions as set out in the Original Application.

2. On behalf of the Petitioner the learned Counsel points out that the enquiry was not common but simultaneous. Learned Counsel points out to us that the chargesheets were separate and an Enquiry Officer was appointed in each case. The Enquiry Officer has also submitted an independent enquiry report. For the sake of convenience all that happened was that the witnesses examined were common witnesses. It is therefore, submitted that it cannot be said that enquiry is common but for all purposes it is a simultaneous enquiry. This Court therefore, ought to interfere with the impugned order and remand the matter back to C.A.T. for decision on merits.

3. On the other hand on behalf of Respondents learned Counsel points out that the findings recorded by the C.A.T. is a finding on fact. Once that be so, this Court in the exercise of its extra ordinary jurisdiction ought not to interfere with the said findings of the C.A.T. Apart from that it is pointed out that Enquiry Officer has examined witnesses in respect of different chargesheets as common witnesses against each delinquent employee and has considered the said evidence for the purpose of submitting his findings. As an illustration it is pointed out that enquiry against another delinquent employee who has been styled as CO-1,

documents purportedly written by him, though he was not examined or the said documents proved, have been used against the Respondents herein. This could not have been done as only documents which were proved and in respect of which the Respondents could have an opportunity of cross examining the witnesses, could have been considered. Therefore it submitted that this Court ought not to interfere in the findings recorded by the C.A.T. as by examining the same witnesses for all chartesheets grave prejudice has been occasioned to the Respondents.

4. We have heard learned Counsel for the Petitioners. We have also noted that earlier another O.A. has been filed by the Respondents being O.A. No.767 of 1991. The point urged in the O.A. was holding of common enquiry. In view of the order passed therein that point was not decided. In the appeal preferred the Respondents herein had raised the issue of common enquiry to contend that the enquiry held was vitiated.

5. From the record we find that rules have been framed for holding common enquiry. The first question is whether the enquiry was common. In the instant case no doubt the chargesheets were issued separately to each delinquent employee. Similarly the enquiry report has been independently made in

respect of each employee. The evidence however both of witnesses on behalf of department and also on behalf of defence were common. The proceedings maintained by the Enquiry Officer were only one. It cannot be said therefore, that the enquiry was simultaneous. It could have been treated as simultaneous after each of the witness on behalf of the delinquent was examined independently in respect of each chargesheet for which the delinquent employee was charged. This was not done. Neither was the consent of the delinquent employee taken for following such procedure. We have therefore, no hesitation in holding that the findings recorded by the C.A.T. do not suffer from any error apparent and no interference is called for by this Court in the exercise of its extra ordinary jurisdiction.

6. We make it clear however, that it is always open to the Petitioner if so advised to hold the enquiry denovo against the Respondents herein.

. We further make it clear that this order is restricted to this Petition alone. With the above observations Petition stand disposed of.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)